

Absence of a fee collection method for prepaid wireless subscribers has results in approx \$2.3 million in uncollected revenue for the 9-1-1 program.

FCC Subscriber Counts (Dec. 2011)

Mobile Telephone Subscribers	864,000
Monthly Billed Subs - 671,328	
Monthly Prepaid Subs 192,672 (22.3% of market)	
Local and VOIP Subscribers	439,000
Total Subscribers	1,303,000

Est. Annual Revenue if all subscribers were paying fee [1,303,000 x \$1 per month x 12 months]	\$15,636,000
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Est. Annual Revenue if prepaid subscribers not paying fee [(1,303,000 - 192,672) x \$1 per month x 12 months]	\$13,323,936
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Actual fees collected in 2011	\$13,376,568
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HB 509 – Provide for prepaid wireless 911 service charge

Why the existing administrative rule contradicts the statute and has technical problems

- DOR has implemented administrative rules designed to address 9-1-1 fees for prepaid wireless subscribers, the pertinent rule is:

42.31.408 COLLECTION AND DETERMINATION OF FEE FOR PREPAID SUBSCRIBERS

(1) The subscriber who receives wireless services from a prepaid service provider is subject to the 9-1-1 emergency telephone service fee collected and remitted to the Department of Revenue by the service provider.

(2) All prepaid service providers are required to collect the 9-1-1 emergency telephone service fee from subscribers in the following manner.

(a) A prepaid service provider will impose the 9-1-1 emergency telephone service fees established in 10-4-201, MCA on the subscriber using one of the following options:

(i) on a monthly basis, the prepaid service provider will collect the amount of the fees established in 10-4-201, MCA from each active prepaid subscriber whose account balance is equal to or greater than the fees established in 10-4-201, MCA; or

(ii) the prepaid service provider will divide the total intrastate monthly revenue by the average revenue for each prepaid subscriber of the wireless industry to determine the number of active access lines. The number of access lines is then applied to the fees established in 10-4-201, MCA to arrive at the amount of fees paid by the subscriber.

- Prepaid customers purchase wireless service on a “pay as you go” basis, mainly from third party independent retailers. There is no practicable opportunity for the prepaid wireless provider to collect a monthly fee from such customers. Clearly, the legislature did not contemplate unbilled, pay as you go prepaid services sold by independent retailers when the statute was enacted.
- DOR’s administrative rule contradicts and goes beyond the underlying statute:
 - The statute specifies that “The *subscriber* paying for exchange access line services is liable for the fees imposed by this section,” emphasis added.
 - The statute defines “wireless provider” as “an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state.” Prepaid wireless providers that are non-facilities based resellers do not fall within this definition. DOR’s administrative rule does not have the statutory authority to expand this definition to encompass resellers.
- DOR’s administrative rule is technically unworkable:
 - Rule 2(a)(i) provides for collection from prepaid customers with an account balance “equal to or greater than the fees...” Few, if any, prepaid wireless providers have the technical capability to track prepaid customer accounts and to take back minutes from the customer each month. This method has no statutory basis, is unfair to customers, and in any case fails to collect a fee from the substantial number of prepaid accounts that do not have a balance equal to or great than the fee at the end of the month.
 - Rule 2(a)(ii) provides a method for computing the amount of fees to be remitted, but provides no method to actually collect the fee from a prepaid subscriber on a monthly basis.
- In summary, the existing rules provide no practicable methods for collecting monthly fees from prepaid customers who (1) do not receive bills and (2) purchase the prepaid service mainly from retailers within Montana. As such these fees are not being collected, resulting in a substantial amount of lost revenue for 9-1-1 program funding.

**Collection of E911 Fees & Taxes from
Customers of Prepaid Wireless Services at the
Retail Point-of-Sale (POS)
States & Jurisdictions That Have Enacted POS Laws**

***Indicates states that have repealed prepaid collection methods currently in
Montana DOR regulations**

February 27, 2013

1. Alabama
2. Arizona
3. Colorado
4. Connecticut*
5. District of Columbia
6. Georgia*
7. Illinois*
8. Indiana*
9. Iowa*
10. Kansas*
11. Louisiana
12. Maine*
13. Michigan*
14. Mississippi
15. Nebraska*
16. North Carolina*
17. Ohio*
18. Oklahoma*
19. Pennsylvania*
20. Rhode Island*
21. South Carolina
22. South Dakota*
23. Tennessee*
24. Texas
25. U.S. Virgin Islands
26. Utah
27. Virginia*
28. West Virginia (sales tax)*
29. Wisconsin (police & fire protection fee)*

**Collection of E911 Fees & Taxes from
Customers of Prepaid Wireless Services at the
Retail Point-of-Sale (POS)**

State POS Bills Introduced & Pending in 2013

February 27, 2013

1. Arkansas – SB 500 (Woods)
2. California – AB 300 (Perea)
3. Florida – HB 807 (Steube), SB 1070 (Hays)
4. Idaho – HB 79, HB 193
5. Kentucky - HB 402 (King), SB 167 (Gibson)
6. Maryland - SB 745 (Middleton)
7. Massachusetts – HB 2131 (Costello)
8. Minnesota – HF 389 (Lesch), SF 367 (Reinert)
9. Missouri – HB 653 (Lauer)
10. Montana – HB 509 (Regier)
11. North Dakota – SB 2261 (Cook)
12. Oregon – HB 2454 (filed at the request of House Interim Committee
on Revenue)
13. Puerto Rico – (Bill introduction pending)
14. Washington – SB 5422 (Ericksen)



AMERICANS for TAX REFORM

February 19, 2013

Rep. Keith Regier
Montana House of Representatives
P.O. Box 200400
Helena, Montana 59620-0400

Dear Rep. Regier,

I write in support of your pending legislation, HB 509, Provide for Prepaid Wireless 911 Service Charge, which provides a clear framework for collecting Montana's emergency 9-1-1 fund and prevents double taxation. Your legislation, HB 509, creates a new method of tax collection and reduces the wireless tax burden on Montana's citizens. It reduces the 9-1-1 fee from \$1.00 per month to \$.85 per month for all wireless customers, and sets the prepaid rate at \$.85 per month per transaction.

For those legislators who have signed the Taxpayer Protection Pledge never to raise taxes, HB 509 is not in violation of that pledge.

The current methods of collecting 9-1-1 taxes for prepaid consumers, who pay as they go instead of receiving monthly bills, are muddled and confusing. ATR supports a point-of-sale collection that allows retailers to collect the 9-1-1 tax at the time of the transaction. Already, at least 20 states have adopted point-of-sale approaches.

The prime benefit from a point-of-sale approach is that it prevents double taxation while ensuring the tax remains transparent to consumers. Unfortunately, other methods of collection include the 9-1-1 tax into the overall cost of the product or deduct the value from a customer's account balance. These methods result in double taxation because state and local sales taxes are applied to the 9-1-1 tax as well.

Point-of-sale allows retailers to collect and remit the 9-1-1 tax as a separate line item on their receipt, preventing unauthorized double taxation on the 9-1-1 fee and maintaining tax transparency. It brings more efficient method of collection, while preventing unintentionally higher taxes on prepaid consumers.

Please contact Katie McAuliffe at kmcauliffe@atr.org or 202-785-0266 with any questions.

Onward,

Grover Norquist

CC: Montana House of Representatives

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**Testimony of
Bethanne Cooley
Director, State Legislative Affairs
CTIA – The Wireless Association®
In Support of House Bill 509
March 8, 2013**

Before the Montana House Federal Relations, Energy & Telecommunications Committee

Chairman Regier, and members of the Committee, thank you for the opportunity to testify today. I am here today on behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry. I am here to address what the wireless industry thinks is a very important 911 issue – the fair and efficient collection of 911 fees from prepaid wireless users. Therefore, I am testifying in favor of HB509, legislation that would codify national model legislation for collection of 911 fees on prepaid wireless service at the point of sale.

The wireless industry believes that the National Conference of State Legislatures' (NCSL) model legislation, embodied in HB509, is the best way to ensure that all users of wireless service contribute to the maintenance and operation of the Montana 911 system. With the rapid growth of prepaid service, it is imperative that Montana and other states adopt a collection methodology that brings parity between prepaid and postpaid consumers while efficiently and effectively collecting 911 fees from the consumers that benefit from the system.

My written testimony addresses the following topics:

- What is prepaid wireless service and how is it different from traditional "postpaid" wireless?
- National trends in the prepaid wireless market.
- The origin, development, and approval of the national model legislation by the National Conference of State Legislatures (NCSL).
- The key provisions of HB509.
- The current status of the model legislation in other states.



How Prepaid Wireless Differs from Postpaid Wireless

Prepaid wireless service allows customers to pay in advance for a fixed number of minutes, or for a fixed time period of use of unlimited minutes. Since customers pay in advance, there is no need to run a credit check on the purchaser and there is no need for the customer to sign a contract for a fixed term of service. This service has proven very popular with credit-challenged consumers as well as those who do not want to enter into a long-term service contract.

Some prepaid providers – such as AT&T, Sprint, T-Mobile and Verizon Wireless – own their wireless networks and sell prepaid service as an alternative to their traditional “postpaid” offerings. Other prepaid providers, like TracFone, do not own their own wireless networks and instead purchase network capacity at wholesale from wireless network owners. Companies like TracFone are known in the industry as MVNOs (Mobile Virtual Network Operators).

Traditional postpaid wireless service is sold directly by the wireless service provider, or its agent, to the consumer. Consumers are billed monthly and must pay that monthly bill, including taxes and fees, in order to receive service. Under federal and Montana law, the wireless provider must receive and record the address for each user’s “place of primary use” which is the residential street address or business location where the use of the wireless service primarily occurs. For this reason, the wireless provider has a straightforward mechanism to determine the location where the service should be subject to taxation and a billing mechanism to collect the fee from the user and remit it to the proper 911 agency.

Prepaid wireless service is marketed and sold differently. The initial purchase of prepaid service typically includes a phone bundled with a fixed number of minutes for a single price. When those minutes are exhausted, the customer has several options.

One option is to go a retail store (like a WalMart, Target, or Best Buy) and purchase a “recharge” card with a fixed number of dollars or minutes. The card includes a phone number and a code that the purchaser uses to add the dollars or minutes to the phone. It is important to note that the customer – and not the retailer — adds the minutes to the customer’s phone. In this



instance, the prepaid provider does not know where the customer purchased the recharge card. Also, neither the provider nor the retail store knows where the customer lives. About 70-80% of all prepaid wireless transactions occur in these third party retail locations.

Another option is to go to a wireless provider's retail store and purchase a recharge card. Again, it is not necessary for the wireless provider to collect any address or other information about the customer at the time of purchase. The customer recharges the minutes at his or her convenience.

A final option is for the customer to recharge their minutes by going directly to the prepaid wireless provider's web site. In these transactions, the customer must use a credit card or other payment instrument to complete the transaction. Some wireless providers will ask for the customer's address information as a fraud prevention measure to verify that the credit card is being used legitimately. Wireless providers may or may not retain the customer's address information for other business purposes.

National Trends in the Prepaid Market

Prepaid wireless has been the fastest growing segment of the fast-growing wireless industry for the past three years. According to CTIA's recent figures:

- Prepaid subscribers are now over 22% of all wireless subscribers, up from 16% in 2007;
- There are now 75 million prepaid wireless subscribers, an increase of 27 million subscribers between December 2008 and December 2012;
- Almost half of all new subscribers added during the last six months were prepaid subscribers. Prepaid wireless service is growing at an annual rate of about 10%, significantly faster than the 5% growth rate of traditional postpaid service.

Clearly, the growth in the prepaid marketplace makes it very important that states adopt legislation to ensure that prepaid wireless 911 subscribers contribute their proportional share to the cost of operating the 911 system. HB509 would implement such a system.



Origin of the Prepaid 911 Point-of-Sale Model Bill

There has been a longstanding acknowledgement by the wireless industry and public safety that the current prepaid wireless 911 fee collection methods in some states, which are based on the postpaid wireless model, are not working. In 2007, the wireless industry recognized that the growth in popularity of prepaid wireless required a new urgency to develop a workable methodology to collect 911 fees from prepaid users.

The industry knew that a workable solution for both the industry and its retail partners required a national scope in order to minimize compliance and administrative costs. The Mobile Telecommunications Sourcing Act has been a successful model where governments and providers have benefitted from a uniform set of rules for sourcing taxation of postpaid wireless service. However, in this case, the wireless industry believed that developing model legislation for the states would be preferable to asking for federal legislation.

The industry reached out to both the public safety community and our retail partners to develop a fair, uniform, and effective system for collecting 911 fees. The wireless industry spent a year working with these groups to develop a proposal to collect fees at the point of sale while minimizing new costs and burdens on retailers. This resulted in model legislation that was presented to the National Conference of State Legislatures (NCSL) for consideration in December 2008. Following three public hearings on the proposal and, after discussion and debate, NCSL endorsed the model legislation in July 2009 during its annual meeting in Philadelphia.

Key Provisions of HB509

HB509 implements the provisions of the NCSL model legislation. Following are the key provisions of the bill:

- Imposes a 911 fee of 85 cents per retail transaction.
- Requires the seller to collect the fee from the customer on each retail transaction and remit the fee to the Department of Revenue.



- A retailer would not have to collect the 911 fee on transactions less than 10 minutes or less than \$5.
- Provides a methodology for sourcing transactions to the state of Montana that is consistent with other states, in order to eliminate tax avoidance or double taxation. This methodology also ensures that the fee is collected not only on face-to-face transactions in the state but also on Internet and other remote sales to Montana customers.
- Permits retailers to keep 5% of collected fees to offset ongoing compliance costs.
- Reduces the landline and wireless billed fees from \$1.00 to .85 cents per month to ensure revenue neutrality.

Status of Prepaid Point of Sale Model Bill in Other States

The attached table shows the status of the bill in legislatures throughout the country. Twenty-six states have adopted the NCSL model act, including the nearby states of South Dakota, Utah, Colorado and Nebraska. Similar point-of-sale legislation is also advancing in Idaho and North Dakota, as well as pending in eleven other state legislatures.

Conclusion: Key Reasons to Support HB509

1. The prepaid point of sale methodology is based on actual sales, is transparent to the consumer, accurately sources the transaction to the state and is a more efficient methodology for the collection of the surcharge directly from all prepaid end users and is fair to post-paid consumers;
2. The prepaid point of sale method will provide stable and predictable revenues to support the 911 system in Montana.
3. HB509 will also ease the tax and fee burden on other consumers through a reduction in the landline and wireless monthly fee from \$1.00 to 85 cents.

Finally, CTIA recognizes that the legislature may want to take additional time to study and examine the point-of-sale model. With that, if the legislature decides that 2013 is not the appropriate time to take action on this legislation, CTIA would respectfully request that the



Energy and Telecommunications Interim Committee study the issue in 2014. We would be happy to assist in any data gathering or provide expertise in this matter.

Thank you again for the opportunity to testify today.



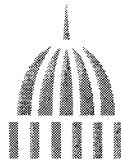
Prepaid Point of Sale Status Sheet

As of January 1, 2013

Enacted Law (25 States and the District of Columbia):

- ME LD 1056 (signed 06/15/2009; effective date 1/1/2010)
- LA HB 782 (signed 07/10/2009; effective date 1/1/2010)
- TX HB 1831 (signed 06/19/2009; effective date 6/1/2010)
- IN HB 1086 (signed 3/25/2010; effective date 7/1/2010)
- SC H 4551 (signed 3/30/2010; effective date 7/1/2011)
- VA HB 754 (signed 4/11/2010; effective date 1/1/2011)
- TN SB 2497 (signed 4/16/2010; effective date 7/1/2011)
- OK HB 2556 (signed 5/4/2010; effective date 1/1/2011)
- MS SB 2938 (signed 5/13/2010; effective date 7/1/2010)
- CO SB 120 (signed 6/7/2010; effective date 1/1/2011)
- RI HB7397, Article 9 (became law 6/12/10; effective date 8/1/2010)
- DC Bill 18-0731 (signed 7/2/2010; effective date 10/1/2010)
- PA HB 2321 (signed 11/23/2010; effective date 7/1/2011)
- UT HB 303 (signed 3/23/2011; effective date 7/1/2011)
- GA HB 256 (signed 5/11/2011; effective date 1/1/2012)
- KS SB 50 (signed 5/18/2011; effective date 1/1/2012)
- NC H571 (signed 6/13/2011; effective date 7/1/2013)
- IL SB2063 (signed 8/19/2011; effective date 1/1/2012)
- SD SB174 (signed 3/2/2012; effective date 7/1/2012)
- AZ HB 2094 (signed 4/5/2012; effective date 1/1/2014)
- NE LB 1091 (signed 4/11/2012; effective date 1/1/2013)
- IA SF2332 (signed 5/1/2012; effective date 1/1/2013)
- AL HB89 (signed 5/8/2012; effective date 1/1/2013)
- CT SB354 (signed 6/15/2012; effective date 1/1/2013)
- MI HB5468 (signed 6/26/2012; effective date 1/1/2013); amended by HB5952 (signed 12/20/2012; immediate effect)
- OH HB360 / HB472 (signed 12/20/2012; effective date 1/1/2014)





NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

NCSL RESOLUTION ON THE COLLECTION OF E911 FEES ON WIRELESS PREPAID SERVICE AT THE POINT-OF-SALE ACT

EXECUTIVE COMMITTEE TASK FORCE ON STATE & LOCAL TAXATION OF COMMUNICATIONS AND ELECTRONIC COMMERCE

WHEREAS, E9-1-1 fees have historically been collected from telecommunications users on their monthly bills and remitted to governments by telecommunications providers; and

WHEREAS, the lack of a billing relationship between the prepaid wireless user and the sellers and providers of prepaid wireless service means that the existing collection methodologies are not well suited to prepaid wireless, causing administrative and legal disputes that inhibit collection of E9-1-1 fees on prepaid wireless service; and

WHEREAS, the number of prepaid wireless users has grown from less than 6% of the wireless marketplace in 2003 to over 18% in 2009; and

WHEREAS, the growth in popularity of prepaid wireless service has led states to consider methods to impose E9-1-1 fees on prepaid wireless service; and

WHEREAS, prepaid wireless users benefit from the access to the 9-1-1 system and should therefore contribute proportionately to funding the 9-1-1 system; and

WHEREAS, the prepaid wireless industry has approached the states with model legislation to create a uniform collection methodology that would collect prepaid wireless E9-1-1 fees on end users at the retail point of sale; and

WHEREAS, the adoption of a uniform methodology for collecting E9-1-1 fees from prepaid wireless consumers would provide needed funding for E9-1-1 systems while minimizing administrative costs for states and providers of prepaid wireless service; and

WHEREAS, the adoption of variations of the model legislation by the states of Maine, Texas, Louisiana and Wisconsin in 2009 legislation demonstrates the need for the National Conference of State Legislatures to endorse a single model to encourage states to adopt an uniform approach; and

WHEREAS, consistent state action through enactment of a model legislation for the collection of E9-1-1 fees on prepaid will forestall federal government intrusion or preemption.

THEREFORE, LET IT BE RESOLVED, that the National Conference of State Legislatures endorses the point-of-sale model legislation, the "Prepaid Wireless Charge," and calls upon State legislatures to pass legislation that implements point-of-sale-collection of E911 fees.